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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

RODOLFO DI MASSA, M.D., AND
KARL NIGG, individually and on behalf
of Stentcor International Inc.

Plaintiffs,

v.

SIMON STERTZER, M.D., MICHAEL
BONEAU, AND MEDTRONIC
ARTERIAL VASCULAR
ENGINEERING, INC., a Delaware
Corporation, Does 1-25 & Roes 26-50,

Defendants;

and

STENTICOR INTERNATIONAL,
INC., a California Corporation,

Nominal Defendant.

Case No. 222363

FIRST AMENDED COMPLAINT
ASSERTING DERIVATIVE AND
INDIVIDUAL CAUSES OF ACTION FOR
BREACH OF CONTRACT; BREACH OF
COVENANT OF GOOD FAITH AND FAIR
DEALING; BREACH OF FIDUCIARY
DUTY; MISAPPROPRIATION OF TRADE
SECRETS; UNFAIR COMPETITION;
INTENTIONAL MISREPRESENTATION;
CONCEALMENT; NONDISCLOSURE;
UNJUST ENRICHMENT AND BREACH
OF CONFIDENCE.

General Civil Case

REST AVAILABLE COPY

Plaintiffs Rodolfo Di Massa M.D. and Karl Nigg ("Plaintiffs") hereby allege as follows:

THE NATURE OF THE ACTION

1. This is a derivative action arising out of the misappropriation of trade secrets of Stenticor International, Inc., nominal defendant, by defendants Simon Stertz and Michael Boneau, who were directors and shareholders in Stenticor, a closely held corporation, before they founded a series of competing corporations in order to exploit Stenticor's ideas without sharing the profits with the other shareholders of Stenticor including Plaintiffs. The last of these corporations, AVE, was merged into Defendant MAVE, which had reason to know that AVE had misappropriated trade secrets.

2. As set forth more fully below, defendants Stertzer and Boneau had signed Agreements with Stentcor under which they agreed that certain ideas, information and know-how were the trade secrets of Stentcor and agreed not to disclose these trade secrets or use them outside of Stentcor and to take all necessary measures to preserve Stentcor's trade secrets. Defendants Stertzer and Boneau breached the Agreement, in violation of their duties to Stentcor and to plaintiffs, who also sue individually.

PARTIES

3. Plaintiffs are residents of the State of California. Plaintiff Rudolfo Di Massa is a resident of the County of Sonoma. Plaintiff Karl Nigg is a resident of the County of Santa Clara. Plaintiffs are bringing this lawsuit in their individual capacity and derivatively as shareholders of Stentcor, International Inc., a California corporation.

4. Nominal defendant Stentikor International Inc. (“Stentikor”) is a California corporation with its principal place of business in the State of California, County of Santa Clara.

5. Defendant Simon Stertzer, M.D., ("Stertzer") is a resident of the State of California, County of San Mateo. Defendant Stertzer is being sued in his individual capacity, in his capacity as a director of Stentcor International, Inc. at the relevant times.

1 6. Defendant Michael Boneau is and at all times mentioned herein was a resident
2 of the State of California, County of Santa Clara. Defendant Michael Boneau is being sued
3 in his individual capacity and in his capacity as a director and shareholder of Stentcor
4 International, Inc.

5 7. Defendant Medtronic Arterial Vascular Engineering Inc. ("AVE") is a
6 Delaware corporation with its principal place of business in the State of California, County
7 of Sonoma. In or about January 1999, Arterial Vascular Engineering Inc. merged with
8 MAV Merger Corp., a wholly owned subsidiary of Medtronic, Inc. Plaintiffs are informed
9 and believe, and on that basis allege that Defendant Medtronic Arterial Vascular
10 Engineering ("MAVE") is now a wholly owned subsidiary of Medtronic, Inc., a Minnesota
11 corporation, with its principal place of business in Minnesota.

12 8. Plaintiffs are ignorant of the true names and capacities of Defendants sued
13 herein as DOES 1 through 25, and ROES 26-50, inclusive, and therefore sue these
14 Defendants by such fictitious names. Plaintiffs will amend this complaint to allege their
15 true names and capacities when ascertained. Plaintiffs are informed and believe that each
16 of these fictitiously named Defendants is responsible in some manner for the occurrences
17 herein alleged, and that Plaintiffs' injuries as herein alleged were proximately caused by the
18 aforementioned Defendants.

19 9. Plaintiffs are informed and believe and thereon allege that at all times
20 mentioned herein each of the Defendants was the agent and employee of each of the
21 remaining Defendants and, in doing the things hereinafter alleged, was acting within the
22 course and scope of such agency and employment.

23 BASIS FOR DERIVATIVE ACTION

24 10. Plaintiff Rodolfo DiMassa owned 60,000 shares of the capital stock of
25 Stentcor at the time of the events complained of and continues to own these shares.

26 11. Plaintiff Karl Nigg owned 60,000 shares of the capital stock of Stentcor at
27 the time of the events complained of and continues to own these shares.

28 12. Plaintiffs did not ask the directors of Stentcor to bring this action on behalf of

1 Stentikor prior to filing this derivative action because such a request would have been futile
2 for the following reasons:

3 13. The following individuals were elected the directors of Stentikor at its
4 incorporation on January 3, 1986: Plaintiff Rodolfo Di Massa and Plaintiff Karl Nigg,
5 Richard Myler, Paul Boneau, Jr., and Defendants Simon Stertz and Michael Boneau.
6 Defendant Stertz resigned from the Board in June 1987. Dr. Myler resigned from the
7 Board in January 2000.

8 14. Defendant Director Michael Boneau is not independent or disinterested
9 because he is being sued for fraud, misappropriation of trade secrets, misappropriation of
10 Stentikor's corporate opportunities and other self dealing and there is a substantial
11 likelihood he will be held liable.

12 15. Director Paul Boneau, Jr. is not independent or disinterested because he is the
13 brother of Defendant Michael Boneau, who is being sued.

14 16. Stentikor's corporate directors Michael Boneau and Paul Boneau are
15 incapable of acting independently and are not disinterested with respect to this suit.
16 Therefore, it would have been futile to demand that the Board take action.

17 17. As a result of Defendants Stertz's and Michael Boneau's fraud and other
18 torts and breaches of their duties to Stentikor, Stentikor was unable to pay California
19 Franchise taxes and was therefore not in good standing and unable to sue in its own name
20 until late January 2000 when Plaintiffs caused the back taxes to be paid and the corporation
21 to be revived. It would have been futile to demand the Board sue while Stentikor was
22 suspended with the State of California.

23 18. As a result of Defendants Stertz's and Boneau's fraud and other torts and
24 breaches of their duties to Stentikor, the corporation became inactive in 1987. No Board or
25 shareholder meetings were held after 1987. Under these circumstances, it would have been
26 impossible, in addition to futile, to make a demand on the Board because Plaintiffs would,
27 on information and belief, have been unable to obtain a quorum of Board members.

28 19. On or before February 2, 2000, Plaintiffs have or will have informed Stentikor

1 and the Board of Directors of the facts of each cause of action in this lawsuit by sending a
2 copy of the First Amended Complaint to each director listed in paragraph 11 at his last
3 known address and to Stentcor at the corporate address, on or before February 2, 2000.

4 GENERAL ALLEGATIONS

5 20. In 1979, Plaintiff Dr. Di Massa was working as Chief of the Primary Care
6 Clinic at the Santa Clara Valley Medical Center ("SCVMC"), which is affiliated with
7 Stanford University, where Dr. Di Massa often attended cardiac conferences. At that time,
8 coronary angioplasty balloon dilation of narrowed arterial segments was a newly developed
9 procedure. Dr. Di Massa soon became aware of the shortcomings of coronary angioplasty,
10 including dangerous lesions at the arterial wall and restenosis (recurrent blockage). In
11 contemplating a way to correct these shortcomings, Dr. Di Massa thought of introducing a
12 second stage to the angioplastic procedure securing a very thin, small metallic sleeve/stent
13 (later referred to as the Di Massa Sleeve) to the inflated balloon, thread it to the dilated site,
14 and leave it in place. The stent would prevent recurrent blockage and also cover up the
15 damage at the inner arterial wall.

16 21. In April of 1979, Dr. Di Massa received a one year grant from the Institution
17 of Medical Research ("IMR"), a SCVMC connected institution, to conduct research testing
18 the applications of his idea for a coronary stent. This grant was awarded by a distinguished
19 panel of reviewers. Dr. Di Massa's research and testing continued into 1980 and was then
20 temporarily suspended for lack of funding.

21 22. At the time, Dr. Di Massa's invention was a revolutionary concept which,
22 based on a bibliographic research of the medical literature, had never before been explored.

23 THE FORMATION OF CVP

24 23. In 1983, Plaintiffs' neighbor, attorney Karl Nigg, introduced Dr. Di Massa to
25 Paul Boneau, and his sons Michael and Paul Jr., for the purpose of possibly forming a joint
26 venture to further develop the coronary stent. The Boneaus owned and operated a precision
27 metal work manufacturing plant. The Boneaus had the equipment and knowledge
28

1 necessary to manufacture the coronary stent envisioned by Dr. Di Massa. Shortly
2 thereafter, Dr. Di Massa entered into a joint venture (called Cardio Vascular Products
3 "CVP") with Paul Boneau and Karl Nigg to manufacture, market and sell the coronary
4 stent. The joint venture also anticipated that the stent concept could be expanded to use in
5 peripheral arteries, such as the renal artery. This joint venture provided the funding needed
6 to continue Dr. Di Massa's research.

7 24. Upon the formation of CVP and continuing through 1986, Dr. Di Massa
8 resumed research and testing of the Di Massa Sleeve, including insertion of the Sleeve into
9 animals. During this time, the design for the coronary stent was refined.

10 25. In approximately November of 1983, a sales representative for a medical
11 supply company suggested to Paul Boneau Sr. that the CVP group contact Dr. Simon
12 Stertz and Dr. Richard Myler, who worked at the San Francisco Heart Institute, which is
13 part of Seton Medical Center, as they were considered leaders in the field of balloon
14 angioplasty.

15 26. In or about 1984, conversations were held between Dr. Stertz, Dr. Myler
16 and the members of CVP to discuss a possible joint venture. Drs. Stertz and Myler were
17 very interested in Dr. Di Massa's stent, and agreed to provide financial assistance and
18 medical assistance in conducting the clinical studies needed to gain FDA approval for the
19 stent.

20 THE FORMATION OF STENTICOR

21 27. In January of 1986, Dr. Di Massa, Defendant Stertz, Defendant Boneau,
22 Dr. Richard Myler, Paul Boneau Sr., Paul Boneau Jr., and Karl Nigg formed Stentcor
23 International, Inc., incorporated in the State of California, in order to continue research and
24 testing on the stent as well as to eventually manufacture, market and sell coronary stents, as
25 well as peripheral stents. Plaintiffs, together with their families, each owned a total of 17%
26 of the stock in Stentcor, as did Defendant Stertz. Defendant Michael Boneau held 7.5%
27 of the stock. The other founders, together with their families, held the remaining stock.
28 Stentcor acquired all of CVP's rights, title, and interest in all medical research,

1 manufacturing, and development of the Di Massa Sleeve.

2 28. - - At or around the time of the formation of Stentcor, each of the incorporators
3 of Stentcor, including Defendants Stertz and Boneau, executed an agreement (the
4 "Agreement") whereby they agreed not to disclose, reveal or use any confidential
5 information or material relating to Stentcor or its business without the express written
6 approval of Stentcor, including "all research, development, manufacturing processes,
7 writings, and other work done on the Di Massa Sleeve."

8 29. Defendants further assigned to Stentcor the "entire right, title, and interest in
9 any invention or idea, patentable or not, hereinbefore or hereinafter made or conceived
10 solely by me, or jointly with any other employee of Stentcor, which relates in any manner
11 to the actual or anticipated business of Stentcor and its subsidiaries, or is suggested by or
12 results from any work or task assigned to me or work performed by me, for or on behalf of
13 Stentcor."

14 30. When signing the Agreement, all of the signatories were asked to represent
15 that they had indicated on the back of the Agreement any inventions or ideas they did not
16 want covered by the Agreement, which they asserted were previously conceived wholly or
17 in part by themselves but not yet published or filed in the United States Patent Office.
18 Defendants Stertz and Boneau each listed "none." Plaintiffs were intended beneficiaries
19 of this Agreement. (Attached hereto and filed herewith as Exhibit "A" is a true and correct
20 copy of the Agreements signed by Defendants Stertz and Boneau.)

21 31. It was further set forth in the Agreement that all work done on the Di Massa
22 Sleeve as of the date of the execution of the Agreement was to be considered and
23 maintained as a trade secret of Stentcor.

24 32. During 1986, Stentcor conducted research and development on the stent;
25 courted potential purchasers; developed the stent for possible patent and FDA approval; and
26 eventual mass production and marketing. Dr. Di Massa personally participated in the
27 animal testing of the stent. In that regard, Dr. Di Massa reduced his employment with
28 SCVMC by one-third in 1984, and resigned his employment with SCVMC in 1985, in order

1 to devote all of his time and energy to Stentcor.

2 33. In October of 1986, after implanting prototypes of the Di Massa Sleeve in
3 dogs with Dr. Di Massa, Defendant Stertzter wrote to Dr. Di Massa informing him the
4 pathology test "clearly indicates to me that this stent is definitely useful when surgically
5 introduced, or even percutaneously introduced into a peripheral vessel such as a carotid
6 femoral or renal. I think this has important implications for Stentcor."

7 34. In November 1986, preliminary results on the Di Massa Sleeve tests were
8 presented by Dr. Di Massa and Defendant Stertzter at the international meeting of the
9 American Heart Association in Dallas, Texas.

10 35. In late 1986 and early 1987, Dr. Di Massa conveyed to Defendant Stertzter
11 several new ideas Dr. Di Massa had for creating an expandable stent, including use of an
12 expandable wire mesh stent, a single wire stent in a sinusoidal design, and use of a heat
13 expanding stent in a coil design made out of a memory metal. Defendant Stertzter informed
14 Dr. Di Massa that these ideas were promising, but that they should first continue testing the
15 Di Massa Sleeve.

16 36. Also in late 1986 or early 1987, Dr. Di Massa conveyed to Defendant Michael
17 Boneau several new ideas Dr. Di Massa had for creating an expandable stent, including use
18 of an expandable wire mesh stent, a single wire stent in a sinusoidal design, and use of a
19 heat expanding stent in a coil design made out of a memory metal.

20 37. In June of 1987, Stertzter suddenly and unexpectedly withdrew from Stentcor,
21 claiming that the "promise for new products and product manufacture were not properly
22 within the purview of Michael and Paul" Boneau, and that the Di Massa Sleeve was
23 essentially unmarketable. Stertzter tendered his shares in Stentcor. As a result of Stertzter's
24 actions, Stentcor no longer had any funding for research, or the use of any medical
25 facilities, and all research and development at Stentcor came to a halt. Defendant Michael
26 Boneau never attempted to disassociate himself with Stentcor.

27 38. After eight years of research and development of the coronary stent,
28 Dr. Di Massa did not have the financial resources to go forward with Stentcor's research

1 alone, and did not believe he would be able to locate new funding sources after Defendant
2 Stertzer, who was a leading authority in the interventional cardiology field, left the project
3 and wrote a letter declaring his alleged belief that the project would not play any future role
4 in the treatment of coronary atherosclerotic heart disease. Consequently, Dr. Di Massa's
5 involvement in Stentcor, and his contacts with the other owners of Stentcor, dwindled and
6 eventually became nonexistent. Stentcor was never dissolved, but was suspended by the
7 Franchise Tax Board in June 1989. Had Defendant Stertzer not abandoned the enterprise,
8 Dr. Di Massa would have continued to research and develop peripheral and coronary stents
9 for Stentcor.

10 THE FORMATION OF ACCUTERIX

11 39. Seven months after Defendant Stertzern left Stentcor, in January of 1988,
12 Defendants Stertzer and Michael Boneau incorporated Accuterix, Inc., a California
13 corporation, in order to produce and market coronary stents.

14 40. Plaintiffs are informed and believe that, prior to Stertzer's resignation from
15 Stentcor, Defendants Stertzer and Michael Boneau took Di Massa's ideas for an
16 expandable version of the stent, as conceived and told to them by Di Massa and
17 contemplated by Stentcor, and decided to keep and use the ideas for themselves in order to
18 obtain a bigger share of the profits they knew would be derived from these ideas.

19 41. In August 1989, Defendant Michael Boneau filed a patent application with the
20 United States Patent Office for an "Endovascular Support Device," otherwise known as the
21 "Boneau Stent," for treatment of chronic restenosis or other vascular narrowing. The patent
22 describes and claims an expandable single-wire stent in a sinusoidal design.

23 42. Defendant Michael Boneau has only a high school education and had no
24 training, experience, or knowledge of medical devices prior to his association with
25 Stentcor. Plaintiffs are informed and believe that Defendants have filed over twenty patent
26 applications over the last ten years related to stents and stent technology developed from
27 work done while working on the Di Massa Sleeve and other stents for Stentcor.

28 43. Plaintiffs are informed and believe, and on that basis allege, that the Boneau

1 Stent and the inventions claimed in the related patents filed by Defendants were based on
2 trade secrets of Stentcor, specifically Dr. Di Massa's original stent concept; his ideas for an
3 expandable stent, as reported by Cardio magazine in January 1987; the concept of an
4 expandable, continuous wire mesh stent; the concept of a sinusoidal design; the concept of a
5 coil design using a memory metal; the concept of delivering a stent to the affected site via a
6 catheter balloon; the concept of using multiple stents for a larger affected area; the research,
7 development and testing done by Dr. Di Massa; the materials used on the Di Massa Sleeve;
8 and possibly the machining techniques developed on the Di Massa Sleeve and the
9 radiopaque qualities of the Di Massa Sleeve. Defendants had no knowledge of these trade
10 secrets prior to becoming associated with Dr. Di Massa and Stentcor. Defendants may also
11 have adopted, in whole or in part, other ideas and features owned by Dr. Di Massa and/or
12 Stentcor.

13 44. Defendants Stertz and Boneau did not inform Plaintiffs or Stentcor of
14 Michael Boneau's various patent applications, of the "Boneau Stent," or of Stertz's and
15 Michael Boneau's continued involvement in stent technology. Similarly, Defendants
16 Stertz and Boneau did not obtain permission or consent from Plaintiffs or Stentcor to use
17 the trade secrets and other information they obtained while active in Stentcor and through
18 their work on the Di Massa Sleeve. Neither did Defendants Stertz and Michael Boneau
19 obtain permission or consent from Plaintiffs to take any business opportunities belonging to
20 Plaintiffs and Stentcor.

21 THE FORMATION OF AVE

22 45. In November 1989, Defendants Stertz and Boneau formed another
23 company, Endovascular Support Systems, Inc. ("ESS"), a California corporation. Plaintiffs
24 are informed and believe, and on that basis allege, that ESS acquired the assets of Accuterix
25 and the sole product of ESS was the Boneau Stent.

26 46. Plaintiffs are informed and believe, and on that basis allege the following: In
27 July of 1991, Defendant Stertz and three others formed Arterial Vascular Engineering,
28 Inc. ("AVE"), previously named Applied Arterial Engineering. In or about October 1992,

1 AVE entered into a sales agreement with ESS, whereby all of the assets of ESS were sold to
2 AVE for \$1.00. Soon thereafter, Defendant Boneau exchanged his stock in ESS for stock in
3 AVE.

4 47. In sum, the concept, ideas, research, development, testing, techniques,
5 materials and delivery system developed by Dr. Di Massa and Stentcor became the basis
6 for the sole products first of Accuterix, then ESS, and then AVE (now MAV). Due to
7 covert actions on the part of Defendants Stertz and Boneau by the formation of their
8 various companies, and in the concealment of their marketing of the coronary stent
9 originally based on Dr. Di Massa's work and ideas, Plaintiffs and Stentcor were deprived
10 of any benefit or profits from the marketing and sale of their inventions.

11 48. In or about April 1996, AVE made an initial public offering of its stock. The
12 stock was initially priced at \$21 per share and eventually rose to a price in excess of \$65 per
13 share.

14 49. In the last five years, AVE's sales of arterial stents have skyrocketed. Its
15 market expanded from Europe, to Japan, and finally to the United States in December 1997,
16 when the Boneau Stent received approval from the United States Food and Drug
17 Administration. In 1998, AVE reported over \$387 million in sales.

18 50. Plaintiffs are informed and believe, and on that basis allege, that AVE merged
19 with MAV Merger Corp., a wholly owned subsidiary of Medtronic, Inc. in or around
20 January 28, 1999, to form MAV. The merger was valued at more than 3.7 billion.
21 Plaintiffs are informed and believe, and on that basis allege, that Defendants Stertz and
22 Michael Boneau have profited based on their misappropriation of Stentcor's trade secrets,
23 the result of Dr. Di Massa's invention and long years of research, development and testing.

24 51. At the time Medtronic merged MAV Merger Corp. with AVE, it was aware
25 that shareholders of ESS had sued and was in active litigation against AVE based on
26 allegations that AVE had improperly taken the Boneau Stent and associated technology
27 from ESS. Thus, MAV had reason to know when it acquired the trade secrets from AVE
28 that AVE had acquired the trade secrets by improper means and/or from a party that had the

1 obligation to maintain their secrecy.

2 52. Plaintiffs did not learn about Defendants Stertzter's and Michael Boneau's
3 participation and involvement in any subsequent companies involving the use,
4 development, and marketing of coronary stents, including Defendant MAVE, until April of
5 1998, when an acquaintance called Di Massa to discuss the great success of MAVE. The
6 acquaintance logically, but incorrectly, assumed that Dr. Di Massa must be one of the
7 original founders and shareholders of MAVE.

8 53. Dr. Di Massa had not been contacted by Defendants Stertzter or Michael
9 Boneau since late 1987, and had never been asked if they could use the trade secrets and
10 confidential information of Stentcor.

11 54. Plaintiffs relied upon their fiduciary relationship with Defendants Stertzter and
12 Boneau, co-owners and co-participants in the research and development of Stentcor, and
13 trusted, based on the contractual relationship, that Defendants would not continue
14 developing coronary stents outside of Stentcor. Plaintiffs also relied on Stertzter's express,
15 written representations that Paul and Michael Boneau did not have the ability to
16 manufacture an expandable stent and that Stentcor did not have a marketable product that
17 showed any future promise. Plaintiffs also relied on the Agreement in that they reasonably
18 expected that if any party to the Agreement knew that the trade secrets of Stentcor were
19 being misappropriated, that party would alert Stentcor as part of his obligation to "do all
20 acts necessary to protect the trade secret." As a result, Plaintiffs had no reason to track
21 Defendants' further research and marketing of coronary stents after Stertzter left Stentcor.
22 In turn, there was no reasonable way that Plaintiffs could have discovered that Defendants
23 Stertzter and Michael Boneau had continued to research, develop and market coronary stents
24 prior to April of 1998.

25 55. Plaintiffs are informed and believe, and on that basis allege, that Defendants
26 Stertzter and Boneau actively sought to conceal their involvement in the subsequent business
27 ventures, including MAVE. For example, a search of the Press Democrat's archives
28 demonstrates that in the well over 100 articles written on AVE/MAVE since 1991, not a

1 single article mentions Defendant Boneau, even though he is the alleged inventor, and
2 patent holder, of MAVE's stent technology. Similarly, only two articles, both published
3 within the past year, make passing mention of Defendant Stertz. The other three founders
4 of AVE/MAVE are discussed extensively in the articles.

5 FIRST CAUSE OF ACTION

6 *(Breach of Contract — Defendants Stertz & Boneau)*

7 56. Plaintiffs incorporate by reference, as though fully set forth herein, the
8 allegations contained in paragraphs 1 through 55 of this complaint.

9 57. The Stentcor Agreement constituted a valid, enforceable contract between
10 Stentcor and Defendants Stertz and Boneau.

11 58. The Agreement was made for the shareholder plaintiffs' benefit in that they
12 were assured that if they assigned all of their right, title and interest to inventions involving
13 stent technology to Stentcor, they would gain an ownership interest, through their Stentcor
14 stock, in the rights, title and interests in inventions related to stent technology developed by
15 the other members of Stentcor, and would be protected against other signatories to the
16 Agreement taking, developing and/or marketing any stent inventions for their own benefit.

17 59. Plaintiffs Dr. Di Massa and Karl Nigg performed their duties under the
18 contract by not revealing any confidential information or material relating to the business of
19 Stentcor, among other things. Dr. Di Massa and Karl Nigg did not pursue any
20 development or marketing of coronary or peripheral stents outside of Stentcor.

21 60. Defendants Stertz and Michael Boneau unjustifiably, materially and totally
22 breached the Agreement by disclosing or revealing to individuals and companies outside of
23 Stentcor, confidential information relating to the business of Stentcor, without first
24 obtaining express written approval of Stentcor, in violation of paragraph 1 of the
25 Agreement.

26 61. Defendants Stertz and Michael Boneau unjustifiably, materially and totally
27 breached the Agreement by using confidential information relating to the business of
28 Stentcor for purposes other than Stentcor business, namely forming and operating several

1 companies to develop, market and sell coronary and peripheral stents, in violation of
2 paragraph 1 of the Agreement.

3 62. Defendants Stertz and Michael Boneau unjustifiably, materially and totally
4 breached the Agreement by failing to disclose immediately to Stentcor the inventions or
5 ideas (including inventions claimed in the Boneau patents) defendants now claim to be
6 theirs, in violation of paragraph 4(a) of the Agreement.

7 63. Defendant Michael Boneau unjustifiably, materially and totally breached the
8 Agreement by failing to promptly execute a specific assignment of title to Stentcor for the
9 inventions claimed in the Boneau patents and failing to do everything else reasonably
10 necessary to enable Stentcor to secure the United States and foreign patent rights to the
11 inventions claimed in the Boneau patents, and instead assigning these rights to competi . rs
12 of Stentcor.

13 64. As a result of Defendants' continuing breaches, Stentcor was denied the
14 profits it would have made from sales of stents and stent-related products had Stertz and
15 Michael Boneau not breached the agreement, in an amount to be proven at trial.

16 65. As a result of Defendants' continuing breaches, Stentcor was denied the
17 royalties it would have made from licensing its trade secrets, and any patents it might have
18 obtained, relating to arterial stents, to other companies.

19 66. As a result of Defendants' continuing breaches, Plaintiffs Di Massa and Nigg
20 were denied their share of the profits that Stentcor would have achieved had Stertz and
21 Boneau not breached the Agreement, in an amount to be proven at trial.

22 SECOND CAUSE OF ACTION

23 *(Breach of the Covenant of Good Faith & Fair Dealing —* 24 *Defendants Stertz & Michael Boneau)*

25 67. Plaintiffs incorporate by reference, as though fully set forth herein, the
26 allegations contained in paragraphs 1 through 66 of this complaint.

27 68. The Agreement contained an implied covenant of good faith and fair dealing
28 by which Defendants Stertz and Boneau promised to give full cooperation to Plaintiffs in

1 developing coronary and peripheral stents for the sole benefit of Stentcor and its
2 shareholders, and to refrain from doing any act which would prevent or impede Plaintiffs
3 from enjoying the fruits of said Agreement. Specifically, the covenant of good faith and
4 fair dealing required Defendants to fairly, honestly and reasonably perform the terms and
5 conditions of their Agreement with Plaintiffs.

6 69. The acts and omissions of Defendants Stertzter and Boneau breached the
7 covenant of good faith and fair dealing, whereby Stertzter and Boneau were obligated not to
8 interfere with Plaintiffs' rights to obtain the benefit of their relationship with Stentcor as
9 shareholders and parties to the Agreement with Stentcor; or with Stentcor's rights under
10 the Agreement. Stertzter and Boneau breached the covenant of good faith and fair dealing
11 by, among other actions, breaching their fiduciary obligations; failing to maintain the trade
12 secrets of Stentcor; wrongfully misappropriating and using the concept, ideas, research,
13 development, testing, materials and delivery system techniques developed by Dr. Di Massa
14 and Stentcor outside the auspices of Stentcor; failing to disclose and concealing this use
15 from Plaintiffs; and developing coronary and peripheral stents without first offering these
16 products/ideas to Plaintiffs and Stentcor.

17 70. As a result of the conduct set forth above, Defendants Stertzter and Boneau
18 were unjustly enriched at the expense of Plaintiffs. Plaintiffs were denied their share of the
19 profits that Stentcor would have achieved had Stertzter and Boneau not breached the
20 Agreement, in an amount to be proven at trial.

21 THIRD CAUSE OF ACTION

22 *(Breach of Fiduciary Duty — Defendants Stertzter & Boneau)*

23 71. Plaintiffs incorporate by reference, as though fully set forth herein, the
24 allegations contained in paragraphs 1 through 70 of this complaint.

25 72. Defendants Stertzter and Boneau owed fiduciary duties to Plaintiffs DiMassa
26 and Nigg and the other Stentcor shareholders and to Stentcor by virtue of their roles as
27 shareholders in a closely held corporation and as directors, and/or officers of Stentcor at
28 the relevant times.

73. The aforementioned acts and omissions of Defendants Stertzer and Michael Boneau, outlined in this complaint, which include failing to maintain the trade secrets of Stentcor; wrongfully using the concept, ideas, research, development, testing, materials and delivery system techniques developed by Dr. Di Massa outside the auspices of Stentcor; concealing this use from Plaintiffs; and developing coronary and peripheral stents without first offering these products/ideas to Plaintiffs and Stentcor, among other things, constitute breaches of the fiduciary duties Stertzer and Boneau owed to Plaintiffs.

74. As a proximate result of Stertzzer's and Boneau's breaches of their fiduciary duties, Stenticor was denied the profits it would have achieved, and Plaintiffs were denied their share of the profits Stenticor would have achieved, had Stertzzer and the Boneaus not breached the Agreement, in an amount to be proven at trial.

75. The above described breaches of fiduciary duty were done willfully and maliciously and therefore Plaintiffs are entitled to recover punitive damages from Defendants in an amount according to proof at trial.

FOURTH CAUSE OF ACTION

*(Breach of Fiduciary Duty by Usurping of Corporate Opportunity —
Defendants Stertzer & Michael Boneau)*

76. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 75 of this complaint.

77. At the relevant times, Defendants Stertz and Boneau occupied positions as shareholders, directors, and/or officers of Stentcor, a closely held corporation functioning much like a partnership. As such, Defendants Stertz and Boneau were prohibited from taking advantage of any business opportunities that could have been utilized by Stentcor and its shareholders, without first offering such opportunities to Stentcor, and/or were prohibited from entering into any business in competition with Stentcor.

78. The aforementioned acts and omissions of Defendants Stertzer and Boneau, outlined in this complaint, which include developing coronary and peripheral stents without first offering these products/ideas to Plaintiffs and Stentcor, among other things, constitute

1 breaches of the fiduciary duties Stertz and Boneau owed to DiMassa, Nigg and Stentcor,
2 and usurping of a corporate opportunity, namely patenting, making, manufacturing,
3 marketing and selling stents based on Stentcor's trade secrets, that should have been
4 offered to Stentcor. Instead, Stertz misrepresented to Stentcor's participants that
5 Stentcor's projects covered by its trade secrets were unmarketable, thus affirmatively
6 denying the existence of the opportunity he and Michael Boneau planned to take and did
7 take for themselves.

8 79. As a proximate result of Stertz's and Michael Boneau's usurping of this
9 corporate opportunity, Plaintiffs were denied their share of the profits that Stentcor would
10 have achieved therefrom, in an amount to be proven at trial. Plaintiffs request that the
11 Court impress a constructive trust in on the property, interests, and profits flowing from the
12 corporate opportunity usurped by Defendants Stertz and Boneau, in favor of the
13 shareholders of Stentcor.

14 80. The above-described breach of fiduciary duty by usurping corporate
15 opportunity was done willfully and maliciously and therefore Plaintiffs are entitled to
16 recover punitive damages from Defendants in an amount according to proof at trial.

17 FIFTH CAUSE OF ACTION

18 *(Misappropriation of Trade Secrets*
19 *in Violation of Civil Code §3426 et. Seq. —Defendants Stertz, Michael Boneau,*
20 *MAVE and All Does and Roes)*

21 81. Plaintiffs incorporate by reference, as though fully set forth herein, the
22 allegations contained in paragraphs 1 through 80 of this complaint.

23 82. Stentcor, and Di Massa and Nigg by and through their ownership in
24 Stentcor, were in possession of trade secrets which consisted of, among other things:
25 1) Dr. Di Massa's ideas for an expandable stent, deliverable to the affected site by a balloon
26 catheter; 2) the general concept of delivering a stent to the affected site via a balloon
27 catheter; 3) the concept of a continuous expandable wire mesh stent deliverable to the
28 affected site by a balloon catheter; 4) the concept of an expandable single wire stent in a

1 sinusoidal design deliverable to the affected site by a balloon catheter; 5) the concept of an
2 expandable continuous wire mesh stent in a coil design using a memory metal; 6) the
3 concept of using multiple stents to treat a large affected area; 7) particular procedures and
4 protocols associated with the implantation of stents developed by Dr. Di Massa during his
5 years of research, development, and testing which will be further revealed subject to an
6 appropriate protective order; 8) the process, procedures, tolerances, composition,
7 machining, metallurgy, finish and other manufacturing and design parameters related to
8 stents developed on behalf of Stentcor; and 9) methods of tracking, locating and implanting
9 the stent, including certain radiopaque qualities. Defendants had no knowledge of these
10 trade secrets prior to becoming associated with Dr. Di Massa.

11 83. Stentcor's trade secrets had enormous economic value deriving from the fact
12 that they were not known to the public or to Stentcor's competitors; as evidenced by the
13 fact that Medtronic, Inc. recently purchased AVE's stock for \$3.7 billion, and AVE's
14 primary products are stents based on trade secrets owned by Stentcor.

15 84. Plaintiffs took great efforts to protect these valuable trade secrets by
16 disclosing said trade secrets only to certain employees and owners of Stentcor on a "need
17 to know" basis, by insisting that each principal owner sign a Confidentiality Agreement and
18 by requiring that potential investors and/or business partners sign a similar confidentiality
19 agreement.

20 85. Defendants Stertz and Michael Boneau knew that the trade secrets described
21 in this Complaint belonged to Stentcor because of their role and activities as directors and
22 shareholders of Stentcor and their involvement in its management and operations at the
23 relevant times and because they had signed the Agreement assigning those rights to
24 Stentcor and acknowledging Stentcor's exclusive rights. They further promised in the
25 Agreement to maintain and preserve the trade secrets.

26 86. On January 29, 1988, and continuing to the present time, Stertz and Boneau
27 misappropriated the above-described trade secrets of Stentcor by secretly taking the
28 concept, ideas, research, development, testing, techniques, materials and delivery system

1 invented by Dr. Di Massa and then creating separate companies, outside the auspices of
2 Stentcor (Accuterix, ESS, AVE, and MAVE) whose primary products were coronary and
3 peripheral stents. This misappropriation continued when Defendants secretly filed patent
4 applications for coronary and/or peripheral stents based on the concept, ideas, research,
5 development, testing, techniques, materials and delivery system developed by Dr. Di Massa
6 and Stentcor.

7 87. The above actions further constituted misappropriations in that Stertz and/or
8 Boneau, after improperly acquiring the trade secrets via a breach of the Agreement,
9 disclosed and used Stentcor's trade secrets without Stentcor's express or implied consent
10 in the formation and course of the operations of Accuterix, ESS, AVE and MAVE.

11 88. Defendants Stertz and Boneau knew that the trade secrets of Stentcor w
12 was acquired by Accuterix, ESS, AVE and MAVE by improper means, i.e., by a breach of
13 the Agreement by Stertz and Boneau. Their knowledge was imputed to Accuterix, ESS,
14 AVE and MAVE.

15 89. Because Medtronic and MAV Merger Corp. knew AVE had been sued on
16 behalf of ESS on allegations that it had improperly taken stent technology from AVE,
17 MAVE had reason to know when it acquired the trade secrets from AVE that AVE had
18 acquired the trade secrets by improper means and/or from a party that had the obligation to
19 maintain their secrecy. MAVE nevertheless used the trade secrets.

20 90. As a proximate result of the above-described misappropriations, Plaintiffs and
21 Stentcor were damaged and Defendants were unjustly enriched at the expense of the
22 Plaintiffs. Plaintiffs DiMassa and Nigg as stockholders were denied their share of the
23 profits that Stentcor would have achieved had Stertz and Michael Boneau and MAVE
24 and the Doe and Roe defendants not misappropriated the trade secrets, in an amount to be
25 proven at trial.

26 91. The above-described misappropriations were done willfully and maliciously
27 and therefore Plaintiffs are entitled to recover punitive damages from Defendants in an
28 amount according to proof at trial.

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SIXTH CAUSE OF ACTION

(Unfair Competition/Violation of California Business and Professions Code §17200 et seq. — All Defendants)

92. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 91 of this complaint.

93. Defendants' acts, as set forth more fully above, constitute unfair competition in violation of California Business and Professions Code § 17200's prohibitions against unlawful, unfair and fraudulent acts.

94. Defendants have wrongfully benefitted and profited from these unlawful, unfair and fraudulent business practices in an amount to be proven at trial.

95. Defendants' conduct alleged in this complaint resulted in the deprivation of Plaintiffs' continuing rights to participate in profits due to exploitation of Stentcor's stent technology, including profits and increases in AVE's stock value due to the merger of AVE with Medtronic.

96. As a result of Defendants' conduct, Plaintiffs were deprived of their rights to the profits resulting from Stentcor's stent technology developed by Dr. Di Massa and Stentcor, while Defendants recognized a substantial profit therefrom.

97. Plaintiffs request that Defendants be forced to disgorge the amount of profits they made from the marketing and sale of coronary and peripheral stents that can be reasonably attributed to Stentcor's stent technology, in an amount to be proven at trial.

98. In the alternative, Plaintiffs request restitution for themselves and Stentcor from Defendants for the idea, invention, research, development and testing of the trade secrets of Stentcor in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

(Intentional Misrepresentation — Defendants Stertz & Boneau)

99. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 98 of this complaint.

1 100. In or around June of 1987, Stertzter represented to Stentcor that the Di Massa
2 Sleeve was essentially unmarketable and that the new product manufacture was not within
3 the purview of the Boneaus. Defendant Michael Boneau, who now claims to be the
4 inventor of the Boneau stent, was aware of Stertzter's representation to Stentcor that his
5 company could not manufacture the "new product," which referred to Di Massa's idea for
6 an expandable stent, but did not contradict it, thereby participating in the misrepresentation.
7 Plaintiffs are informed and believe, and on that basis allege, that Defendants then took the
8 concept, ideas, research, development, testing, techniques, materials and delivery system
9 developed by Dr. Di Massa and Stentcor, and continued to market and develop these ideas
10 for their own use and profit.

11 101. Plaintiffs are informed and believe, and on that basis allege, that Defendants'
12 representations were false in that the concept, ideas, research, development, testing,
13 techniques, materials and delivery system developed by Dr. Di Massa and Stentcor were, in
14 fact, marketable and later became the basis of the primary product sold by MAVE; and also
15 because within months of Stertzter leaving Stentcor Defendant Boneau did, in fact,
16 manufacture an expandable stent based on one of Dr. Di Massa's designs.

17 102. Plaintiffs are informed and believe, and on that basis allege, that at the time
18 Defendants made the representations that the Boneaus did not have the ability to produce an
19 expandable stent and that the Di Massa Sleeve was essentially unmarketable, they knew that
20 said representations were false.

21 103. Plaintiffs are informed and believe, and on that basis allege, that Defendants
22 made the false representations with the intent of defrauding Plaintiffs by leading the other
23 shareholders and other directors of Stentcor to believe that the concept, ideas, research,
24 development, testing, techniques, materials and delivery system developed by Dr. Di Massa
25 and Stentcor were unmarketable, so that they would not continue to pursue Stentcor's
26 development of coronary or peripheral stents and would not suspect that Defendants were
27 continuing to develop coronary stents based on Stentcor's trade secrets for competitors of
28 Stentcor for their own eventual profit.

1 104. Plaintiffs relied on Defendants' false representations and essentially
2 discontinued any further development of coronary or peripheral stents. In further reliance
3 upon Defendants' false representation, they did not monitor Defendants Stertz and
4 Boneau in any way to determine whether they had continued to develop and/or market
5 coronary stents.

6 105. As a result of their reliance on Defendants' false representations, Plaintiffs
7 were denied their share of the profits that Stentcor would have achieved had Defendants
8 not intentionally misled them and breached the Agreement, in an amount to be proven at
9 trial.

10 106. Defendants' misrepresentations of these material facts were willful, malicious
11 and oppressive. Plaintiffs are therefore entitled to punitive damages.

12 EIGHTH CAUSE OF ACTION

13 *(Concealment — Defendants Stertz & Boneau)*

14 107. Plaintiffs incorporate by reference, as though fully set forth herein, the
15 allegations contained in paragraphs 1 through 106 of this complaint.

16 108. Beginning in June of 1987, and continuing until the present time, Stertz and
17 Boneau concealed and suppressed from Plaintiffs their plans to continue and their
18 continuing to develop and market coronary and peripheral stents for their own profit and for
19 competitors of Stentcor.

20 109. By and through the Agreement and based on the business relationship among
21 Plaintiffs, Stertz and Boneau, Stertz and Boneau owed fiduciary duties to Stentcor and
22 plaintiff and also had a duty to maintain confidences of Stentcor. As such, Stertz and
23 Boneau had both a contractual and fiduciary duty to inform Plaintiffs and Stentcor that they
24 were going to continue to develop and market coronary and peripheral stents using
25 Stentcor's trade secrets for their own profit.

26 110. Plaintiffs are informed and believe, and on that basis allege, that Stertz and
27 Boneau concealed or suppressed their continued involvement in stent technology with the
28 intent of defrauding Plaintiffs.

1 111. Plaintiffs were unaware of the fact that Stertz and Michael Boneau
2 continued to develop and market coronary and peripheral stents after 1987 and had no
3 reason to be aware of these events. Had Plaintiffs known this, they would have asserted the
4 claims set forth in this complaint sooner, and before the merger of AVE to form MAVE.

5 112. As a result of Stertz and Boneau's concealment or suppression of their post
6 1987 development and marketing of coronary and peripheral stents, Plaintiffs were denied
7 their share of the profits that Stentcor would have achieved had Stertz and Boneau not
8 concealed this information and breached the Agreement, in an amount to be proven at trial.

9 113. Defendants' concealment or suppression of these material facts was willful,
10 malicious and oppressive. Plaintiffs are therefore entitled to punitive damages.

11 NINTH CAUSE OF ACTION

12 *(Nondisclosure of Known Facts —* 13 *Defendants Stertz & Michael Boneau)*

14 114. Plaintiffs incorporate by reference, as though fully set forth herein, the
15 allegations contained in paragraphs 1 through 113 of this complaint.

16 115. Due to the fiduciary and/or confidential relationship between Plaintiffs and
17 Stentcor and Defendants, Stertz and Boneau each had a duty to disclose to Plaintiffs and
18 Stentcor the fact that each of them intended to use the concept, ideas, research,
19 development, testing, materials and delivery system techniques developed by Dr. Di Massa
20 and Stentcor outside the auspices of Stentcor; intended to produce and market other
21 coronary and peripheral stents without first offering these products/ideas to Plaintiffs and
22 Stentcor; among other things.

23 116. Stertz and the Boneau defendants did not disclose these material facts to
24 Plaintiffs or Stentcor.

25 117. As a result of the conduct set forth above, Plaintiffs were denied their share of
26 the profits that Stentcor would have achieved had Stertz and Boneau not breached the
27 Agreement, in an amount to be proven at trial.

TENTH CAUSE OF ACTION

*(Unjust Enrichment/Imposition of Constructive Trust —
Defendants Stertz & Michael Boneau and MAVE)*

118. Plaintiffs incorporate by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 117 of this complaint.

119. Between 1979 and 1987, Stentcor and plaintiffs spent hundreds of hours working on the Di Massa Sleeve, expandable stents, and related stent technology, directly furthering the objectives of Defendants, without compensation.

120. Defendants received economic benefit and/or monetary profit as a direct result of Plaintiffs' ideas, work and efforts as pleaded in this complaint.

121. Despite Defendants' Stertz's and Boneau's promises, both written and oral, express and implied, Plaintiffs received no benefit, and Defendants received substantial benefit, for the time and efforts expended by Plaintiffs. The benefit to AVE was the stent technology of Stentcor and technology developed therefrom and profit therefrom. The benefit received by Defendants Stertz and Boneau included ownership interests in AVE and now in MAVE.

122. Defendants Stertz and Boneau gained this ownership interest by fraud, misappropriation and breach of trust, as fully described above, and were unjustly enriched as a result of their wrongdoing.

123. All shareholders in Stentcor have a right to an ownership interest in AVE, now MAVE, equal to their ownership interest in Stentcor.

124. By virtue of Defendants' Stertz and Boneau's violation of the relationship of trust and confidence then existing between Plaintiffs and Defendants Stertz and Boneau, Defendants hold their ownership interest in AVE, now MAVE, and any profits therefrom, in trust for Plaintiffs and Stentcor.

125. Defendants request that Defendants be forced to disgorge the amount of profits they made from the marketing and sale of coronary stents that can be reasonably attributed to the stent technology of Stentcor, in an amount to be proven at trial.

1 126. Defendants' unjust enrichment at Plaintiffs' expense was willful, malicious
2 and oppressive. Plaintiffs are therefore entitled to punitive damages.

3 ELEVENTH CAUSE OF ACTION

4 *(Breach of Confidence- Against Stertz & Boneau)*

5 127. Plaintiffs incorporate by reference, as though fully set forth herein, the
6 allegations contained in paragraphs 1 through 126 of this complaint.

7 128. While Defendants Stertz and Boneau were employees, directors and
8 managers of Stentcor, Stentcor communicated to defendants novel and protectable
9 confidential ideas and information concerning the design and manufacture of expandable
10 stents and their use in treating coronary patients, as described more fully above.

11 129. Defendants Stertz and Boneau received these ideas and this information in
12 confidence by agreeing not to disclose such information to any other person or entity
13 without the permission of Stentcor, as evidenced by the Agreements attached to this
14 Complaint as Exhibit A. Defendants Stertz and Boneau, and each of them, understood
15 that such information was being communicated to them for the sole purpose of performing
16 their duties as Stentcor employees and directors for the benefit of Stentcor's business.

17 130. Defendants Stertz and Boneau, and each of them, breached their duty of
18 confidence to Stentcor by communicating the ideas and information to Accuterix, ESS,
19 AVE and MAVE.

20 131. As a proximate result of the breach of the duty of confidence by Defendants
21 Stertz and Boneau, and each of them, Stentcor has suffered damages in an amount to be
22 proved at trial, through lost profits Stentcor would have made selling the stents or licensing
23 its ideas to another company.

24 132. The wrongful conduct of Defendants Stertz and Boneau, and each of them,
25 was done with malice, oppression and/or fraud, in that they disclosed Stentcor's
26 confidential information with the deliberate intent to injure Stentcor by taking its stent
27 development, licensing and sales business, in conscious disregard of their duties to Stentcor
28 and Stentcor's rights and with the use of intentional misrepresentations and/or concealment

1 of material facts, thereby warranting an award of punitive damages in an amount
2 appropriate to punish defendants and deter others from engaging in similar misconduct.

3 WHEREFORE, Plaintiffs pray as follows:

4 1. For general damages according to proof at trial in excess of the jurisdictional
5 minimum of the Superior Court;

6 2. For special damages according to proof at trial;

7 3. For punitive damages in an amount to be proven at trial;

8 4. For disgorgement to Stentcor of any and all profits that Defendants made
9 based on the marketing development and/or sale of coronary or peripheral stents in an
10 amount to be proven at trial;

11 5. For restitution rightfully owed to Stentcor by Defendants as a result of their
12 utilization of the invention, research, development and testing done by Stentcor and/or
13 Plaintiffs, in an amount to be proven at trial;

14 6. For imposition of a constructive trust, for the shareholders of Stentcor, on the
15 stock and/or funds unjustly received by Defendants as a result of their utilization of the
16 trade secrets of Stentcor;


17 7. For an injunction ordering Michael Boneau to assign all stent-related patents
18 and applications, United States or foreign, to Stentcor and ordering the other defendants to
19 cooperate and take all steps necessary to further and not impede the assignment of such
20 rights to Stentcor;

21 8. For attorneys' fees and costs of suit incurred in this lawsuit; and

22 9. For such other and further relief as the Court deems just and proper.

23 Dated: February 1, 2000.

CARLE, MACKIE, POWER & ROSS LLP

24
25 By: 
26 Dawn M. Ross
27 Attorneys for Plaintiffs Di Massa & Nigg
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Carle, Mackie, Power & Ross LLP, 100 B. Street, Suite 400, Santa Rosa, California 95814. I am over 18 years of age and am not a party to the within action. On the date indicated below, I served a true copy(ies) of the following document(s):

- 1) FIRST AMENDED COMPLAINT
- 2) SUMMONS ON FIRST AMENDED COMPLAINT
- 3) ASSOCIATION OF COUNSEL

on the party(ies) in this action by placing a true copy(ies) thereof in a sealed envelope(s), addressed as follows:

Jan M. Conlin, Esq.
Mark D. Wisser, Esq.
Robins Kaplan Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota

☒ (BY MAIL) I placed each such sealed envelope, with postage fully prepaid for first-class mail, for collection and mailing at Carle, Mackie, Power & Ross LLP, Santa Rosa, California following the ordinary business practices. I am readily familiar with the practice of Carle, Mackie, Power & Ross LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

☐ (BY FACSIMILE) I caused each such document to be delivered by facsimile to the individual/firm listed above from the offices of Carle, Mackie, Power & Ross LLP, Santa Rosa, California following ordinary business practices.

☐ (BY OVERNIGHT DELIVERY) I placed each such sealed envelope, with delivery fees proved for, for collection and overnight delivery at Carle, Mackie, Power & Ross LLP, Santa Rosa, California following the ordinary business practices.

☐ (PERSONAL SERVICE) I personally delivered each sealed envelope, by leaving it with the person to whom it was directed, the office receptionist or with a person having charge thereof, clearly labeled to identify the person being served.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

DATED: February 1, 2000


Janice E. Garcia

Ex

A

STENTICOR INTERNATIONAL, INC.

SHAREHOLDER and EMPLOYEE CONFIDENTIAL INFORMATION

and INVENTION AGREEMENT

In consideration of my ownership interest and employment by and with STENTICOR INTERNATIONAL, INC. I, the undersigned individual do hereby agree to the following terms and conditions:

1. I will not disclose or reveal to anyone outside of STENTICOR INTERNATIONAL, INC., hereinafter referred to as STENTICOR, or use in other than STENTICOR business, any confidential information or material relating to the business of STENTICOR or its subsidiaries, either during or after my STENTICOR employment, except with the express written approval of STENTICOR first obtained. I also understand that information and materials received from other STENTICOR employees, vendors, or third parties is included within the meaning of this paragraph. I expressly agree that all research, development, manufacturing processes, writings, and other work done on the DIMASSA SLEEVE, prior to the formation and incorporation of STENTICOR, shall belong to and be the property of STENTICOR and shall be included within the terms and meanings of this AGREEMENT. I further agree that all work done, to-date, on the DIMASSA SLEEVE shall be treated as a trade secret and I will do all acts necessary to protect said trade secret.
2. I agree to comply, and do all things necessary for STENTICOR to comply with United States Government regulations, including but not limited to the Food and Drug Administration, and with the provisions of any contracts between STENTICOR and any medical facility in the United States or any other country that STENTICOR shall do business.
3. I hereby assign to STENTICOR my entire right, title, and interest in any invention or idea, patentable or not, hereinbefore or hereinafter made or conceived solely by me, or jointly with any other employee of STENTICOR, which relates in any manner to the actual or anticipated business of STENTICOR, and its subsidiaries, or is suggested by or results from any work or task assigned to me, or work performed by me, for or on behalf of STENTICOR. I further agree that this Paragraph 3 shall mean to include all medical research, manufacturing and development done on the DIMASSA SLEEVE for and on behalf of Cardio Vascular Products, hereinafter referred to as CVP, prior to the formation of STENTICOR.
4. I agree, in connection with any invention or idea covered by this AGREEMENT, including the medical research, manufacturing processes and ideas developed for STENTICOR and/or CVP, as follows:
 - a) I will disclose the idea and/or invention promptly to STENTICOR; and
 - b) I will, on the request of STENTICOR, promptly execute a specific assignment of title to STENTICOR, and do anything else reasonably

necessary to enable STENTICOR to secure a patent therefor in the United States and in any foreign country; and

c) I will treat any invention or idea, covered by this AGREEMENT, as a trade secret and will not reveal any of the processes used or developed for the manufacture of any product of STENTICOR.

d) I will, upon termination of my employment with STENTICOR or upon termination of this AGREEMENT, immediately return to STENTICOR all records, documents, writings, and other information received by me during the term of this AGREEMENT or during the period of my work for CVP.

5. I represent that I have indicated on the back of this AGREEMENT any inventions or ideas not covered by the terms and conditions herein contained, in which I have any right, title, or interest, and which were previously conceived wholly or in part by me, but neither published nor filed in the United States Patent Office, and I have herein identified all of said ideas and inventions.

If there are no ideas or inventions write "NONE" on the next line.

NONE

6. I acknowledge receipt of a copy of this AGREEMENT, and agree that with respect to the subject matter hereof, it is my entire agreement with STENTICOR, superceding any previous oral or written agreements, representations, contracts, or understandings with STENTICOR or CARDIO VASCULAR PRODUCTS (CVP), their partners, stockholders, officers, employees or representatives.

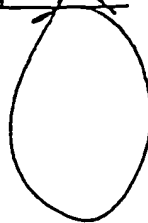
7. I agree that if any dispute shall arise over the terms and conditions contained herein, said dispute shall be referred to the American Arbitration Association for binding arbitration according to the rules and regulations of the American Arbitration Association. All costs of arbitration shall be shared equally by myself and STENTICOR. Any award of the Arbitrator shall be final and conclusive on myself and STENTICOR and both parties agree to be bound by said decision.

Executed on 25 MARCH, 1986 at SETON MEDICAL CTR
DALY CITY
California.

Witness Laura E. Martinez

signed HE [Signature]

Witness Suzanne A. Stelson



STENTICOR INTERNATIONAL, INC.

SHAREHOLDER and EMPLOYEE CONFIDENTIAL INFORMATION

and INVENTION AGREEMENT

In consideration of my ownership interest and employment by and with STENTICOR INTERNATIONAL, INC. I, the undersigned individual do hereby agree to the following terms and conditions:

1. I will not disclose or reveal to anyone outside of STENTICOR INTERNATIONAL, INC., hereinafter referred to as STENTICOR, or use in other than STENTICOR business, any confidential information or material relating to the business of STENTICOR or its subsidiaries, either during or after my STENTICOR employment, except with the express written approval of STENTICOR first obtained. I also understand that information and materials received from other STENTICOR employees, vendors, or third parties is included within the meaning of this paragraph. I expressly agree that all research, development, manufacturing processes, writings, and other work done on the DIMASSA SLEEVE, prior to the formation and incorporation of STENTICOR, shall belong to and be the property of STENTICOR and shall be included within the terms and meanings of this AGREEMENT. I further agree that all work done, to-date, on the DIMASSA SLEEVE shall be treated as a trade secret and I will do all acts necessary to protect said trade secret.
2. I agree to comply, and do all things necessary for STENTICOR to comply with United States Government regulations, including but not limited to the Food and Drug Administration, and with the provisions of any contracts between STENTICOR and any medical facility in the United States or any other country that STENTICOR shall do business.
3. I hereby assign to STENTICOR my entire right, title, and interest in any invention or idea, patentable or not, hereinbefore or hereinafter made or conceived solely by me, or jointly with any other employee of STENTICOR, which relates in any manner to the actual or anticipated business of STENTICOR, and its subsidiaries, or is suggested by or results from any work or task assigned to me, or work performed by me, for or on behalf of STENTICOR. I further agree that this Paragraph 3 shall mean to include all medical research, manufacturing and development done on the DIMASSA SLEEVE for and on behalf of Cardio Vascular Products, hereinafter referred to as CVP, prior to the formation of STENTICOR.
4. I agree, in connection with any invention or idea covered by this AGREEMENT, including the medical research, manufacturing processes and ideas developed for STENTICOR and/or CVP, as follows:
 - a) I will disclose the idea and/or invention promptly to STENTICOR; and
 - b) I will, on the request of STENTICOR, promptly execute a specific assignment of title to STENTICOR, and do anything else reasonably

necessary to enable STENTICOR to secure a patent therefor in the United States and in any foreign country; and

c) I will treat any invention or idea, covered by this AGREEMENT, as a trade secret and will not reveal any of the processes used or developed for the manufacture of any product of STENTICOR.

d) I will, upon termination of my employment with STENTICOR or upon termination of this AGREEMENT, immediately return to STENTICOR all records, documents, writings, and other information received by me during the term of this AGREEMENT or during the period of my work for CVP.

5. I represent that I have indicated on the back of this AGREEMENT any inventions or ideas not covered by the terms and conditions herein contained, in which I have any right, title, or interest, and which were previously conceived wholly or in part by me, but neither published nor filed in the United States Patent Office, and I have herein identified all of said ideas and inventions.

If there are no ideas or inventions write "NONE" on the next line.

NONE

6. I acknowledge receipt of a copy of this AGREEMENT, and agree that with respect to the subject matter hereof, it is my entire agreement with STENTICOR, superceding any previous oral or written agreements, representations, contracts, or understandings with STENTICOR or CARDIO VASCULAR PRODUCTS (CVP), their partners, stockholders, officers, employees or representatives.

7. I agree that if any dispute shall arise over the terms and conditions contained herein, said dispute shall be referred to the American Arbitration Association for binding arbitration according to the rules and regulations of the American Arbitration Association. All costs of arbitration shall be shared equally by myself and STENTICOR. Any award of the Arbitrator shall be final and conclusive on myself and STENTICOR and both parties agree to be bound by said decision.

Executed on
California.

MARCH 26 1986, 1986 at Santa Clara

Witness

J. Immele

Signed

[Signature]

Witness

Maricela Fejard

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